



AUDIT OF COMPLIANCE  
WITH SUNSHINE LAW REQUIREMENTS

**From The Office Of State Auditor  
Claire McCaskill**

Report No. 99-104  
November 6, 1999

*There is no assurance that political subdivisions would comply with the record request provisions of the Sunshine Law.*

PERFORMANCE AUDIT



Office Of The  
State Auditor Of Missouri  
Claire McCaskill

November 1999

**An estimated 1,649 of 3,459 (47.6%) political subdivisions would not respond properly to requests for information under the provisions of the Sunshine Law.**

The State Auditor's Office has a role to determine compliance with Missouri's laws. Because of recent citizen concerns and lawsuits over access to public records, we conducted a review of compliance with the Sunshine Law to determine if political subdivisions understood their responsibilities under the law.

We did not want to place an undue burden on the political subdivisions by causing them to engage in lengthy and costly record searches. We mailed a letter on plain paper making a simple request for the minutes to the last board meeting held in calendar year 1998. We also asked the political subdivisions not to incur expenses for searching or copying in excess of \$10 without prior notification. We reimbursed the political subdivisions for their costs. By asking for the minutes, we were also able to determine compliance with the closed session provisions of the Sunshine Law.

The review disclosed that a significant number of political subdivisions did not respond to our request, denied our request, or responded late. Our review of the causes for not complying with the law disclosed that political subdivisions placed unnecessary requirements on the citizens before the response would be provided. For example, a school district superintendent stated:

"Your request was not made on your business letterhead stationary. As a matter of fact, we do not know what firm you represent. No rationale was given for the request. Therefore, your request has been denied until more information is submitted."

A clerk of a township stated:

"First, we don't know who you are, or anything about why you should want these minutes. We can't just send this information to anyone without knowing what they want with them."

We followed up with non-respondents and determined that they were not aware of their responsibilities under the Sunshine Law or they ignored the request because they believed they needed to get further approval or information before they responded.

A township treasurer stated she would comply with the request if given a good reason to do so. She said she was not familiar with the Sunshine Law, but realizes the public has a right to public records.

(over)

A director of a state funded public library stated that she thought the request was so

unusual that she was waiting for the next board meeting to decide how to, or if, they would respond.

The audit disclosed that most late responses were not significantly late, usually only a day or two. Our office did not follow-up on the causes for delays because most delays were not material.

Our review of the board meeting minutes that were sent in response to our requests disclosed that, generally, the respondents cited one of the reasons identified in the statute for entering into a closed session and documented it in the minutes.

Political subdivisions risk lawsuits, fines, and loss of credibility by not properly following the provisions of the Sunshine Law.

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**CLAIRE C. McCASKILL**  
**Missouri State Auditor**

Honorable Mel Carnahan  
and  
Members of the General Assembly

The State Auditor performed an audit of compliance with requests for records under Section 610.023, RSMo--Missouri Sunshine Law. The objective of the audit was to determine if political subdivisions were aware of their responsibilities to provide access to public records upon request. Two specific requirements were tested during this audit.

- ☐ Did the political subdivision provide the records?
- ☐ Did the political subdivision provide the response within 3 business days of receipt of the request?

We concluded that nearly one half of the political subdivisions included in our sample did not properly comply with the Sunshine Law regarding requests for records. Based on the results of our statistical sample, we estimated that 1,649 of the 3,459 (47.6%) political subdivisions would not respond properly to public requests. They did not respond to the requests, denied the requests, or delayed their responses to the requests. By failing to respond to requests or denying requests unjustifiably, political subdivisions risk fines, lawsuits, and loss of credibility with their constituency.

Claire McCaskill  
State Auditor

## **RESULTS**

### **There Is No Assurance that Political Subdivisions Would Comply with the Record Request Provisions of the Sunshine Law**

Our office determined that 102 of 214 political subdivisions in our sample were not aware of their responsibilities to respond to requests for information from the general public, or they denied requests for reasons not acceptable under the Sunshine Law. Additionally, some political subdivisions responded late and others required the citizens to identify their purpose for requesting the information before releasing it. In a follow-up with the non-respondents and those who denied the requests, we identified the following causes for not complying with the Sunshine Law:

- ❑ Unaware of their responsibilities
- ❑ Did not have minutes and did not respond
- ❑ Believed another board meeting was needed to determine if they would respond

By not responding to requests properly or timely, political subdivisions subject themselves to lawsuits and fines and risk their credibility with their constituency.

### **Universe of Political Subdivisions**

The auditor's office maintains a database of political subdivisions that contains 3,459 entities. From this universe, we selected a random statistical sample of 214 political subdivisions and sent a request for the minutes of their last board meeting held in calendar year 1998. (*See Appendix III, page 9, for a detailed discussion of the sample results.*)

### **Audit Procedure and Criteria**

The audit test was conducted in a manner that gave the appearance that the request letters came from private citizens. The request letter that we sent on plain paper stated:

“I request that you make available to me a copy of the minutes of the last meeting held in Calendar year 1998. Please let me know in advance of any search or copying if the fees for such search and copying will exceed \$10.”

The letter was sent to political subdivisions in all geographic locations within the state, and our office made no distinction between the size, location, or purpose of the entity when applying the requirements of the Sunshine Law. (*See Appendix I, page 6, for a breakout by type of political subdivisions included in our sample.*)

According to Section 610.023 RSMo:

“Each request for access to a public record shall be acted upon as soon as possible, but in no event

later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.”

### **Not all political subdivisions responded properly to requests for records**

The random statistical sample of 214 political subdivisions disclosed that 102 did not respond properly to requests for records. Based on these results, we estimated 1,649 of the 3,459 (47.6%) political subdivisions would not respond properly to requests for records from citizens. Some did not respond at all, others denied the requests without proper justification, and others delayed their responses beyond the timeframes established in the statutes.

1,649 would  
not respond  
properly

### **Political subdivisions did not respond to requests for records**

Based on the results of the sample, we estimated that 1,115 of the 3,459 (32.2%) political subdivisions would not respond to requests for records from citizens. Our audit test included sending the letter requests by certified return receipt requested mail, and although our office received the certification of delivery cards, we did not receive the requested records or a response from the political subdivision. In a follow-up with selected non-respondents, we found that they did not know what to do with the request when they received it.

1,115 would  
not respond  
to requests

- ❑ A director of a state funded public library stated that she thought the request was so unusual that she was waiting for the next board meeting to decide how to, or if, they would respond.
- ❑ An attorney for a levy district stated that they did not have any written minutes but he said he could write them.
- ❑ A city clerk said she tried to call the citizen to inquire who was asking for the information.
- ❑ A township treasurer stated she would comply with the request if given a good reason to do so. She said she was not familiar with the Sunshine Law, but realizes the public has a right to public records.

*(See Appendix IV, page 11, for a list of the non-respondents.)*

### **Political subdivisions denied requests for information without proper justification**

According to Section 610.023 RSMo, “if a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the

requester no later than the end of the third business day following the date that the request for the statement is received.”

Based on the results of the sample, we estimated that 162 of the 3,459 (4.6 %) political subdivisions would deny requests for records. Not one of the denials met the criteria for denying requests. Examples from our sample of 214 political subdivisions showed that the reasons for denial were not justified.

162 would  
deny request

- A letter from a school district superintendent stated the following:

“Your request was not made on your business letterhead stationery. As a matter of fact, we do not know what firm you represent. No rationale was given for the request. Therefore, your request has been denied until more information is submitted.”

- A letter from an attorney for a special road district stated the following:

“Please advise me as to the reason and purpose for your request, and whether or not you are the owner of any lands located within the district. If you are a landowner, please advise me as to the location of your lands by section, township and range.”

- A letter from the clerk of a township stated the following:

“First, we don’t know who you are, or anything about why you should want these minutes. We can’t just send this information to anyone without knowing what they want with them.”

There is no provision in the revised statutes for making these type demands on the citizenry prior to providing the information. *(See Appendix V, page 13, for a list of the political subdivisions that denied the request.)*

### **Political subdivisions were generally timely in responding to requests for records**

Although an estimated 372 of the 3,459 (10.7%) political subdivisions would provide their responses after the 3-business day timeframe for response, in most cases the delays would not be significant. Our office used the day after the political subdivision received our request and the postmark of the response letter to determine elapsed days. The delays were usually only 1 to 3 days, which we do not believe to be significant in measuring compliance with the response period.

372 would  
delay request

Number of Entities	Days Late
210	1-3
113	4-6
49	9-16



### **Improvement was needed in documenting reasons for entering into closed sessions**

The auditor's office reviewed copies of minutes received from 103 political subdivisions and determined that 33 had gone into closed session at some point during the meeting. Section 610.021 states the criteria for entering into a closed session at a public meeting. Legitimate reasons for entering into closed sessions include discussions of employee performance and personal conduct matters.

A review of the minutes disclosed that 27 of 33 (82%) of the political subdivisions that went into closed session cited one of the reasons identified in the statute for entering into a closed session and documented it in the minutes. Regarding the six entities that did not disclose the reason for entering into a closed session, we do not know whether they did not properly disclose the reason or they just did not properly document the reason.

### **Conclusion**

We concluded that compliance with the Sunshine Law would improve measurably if political subdivisions understood their responsibilities. Merely wanting to know who is asking or why they are asking is not sufficient justification for denying, not responding, or delaying responses to requests for public records.

## APPENDIX I

### **OBJECTIVE, SCOPE AND METHODOLOGY**

#### **Objective**

The objective of the audit was to determine if political subdivisions were aware of their responsibilities for responding to public requests for records. The audit measured the number of responses received in our tests and the timeliness of those responses.

#### **Scope and Methodology**

Our office selected a random statistical sample of 214 political subdivisions from the 3,459 political subdivisions maintained in our database. (*Specific discussion of the sampling methodology is contained in Appendix III, page 9*). To meet the audit objective we sent a request for board meeting notes to each of the 214 political subdivisions and interviewed responsible personnel as appropriate. The sample included the following types of political subdivisions:

<b>Political Subdivision</b>	<b>Number</b>	<b>Political Subdivision</b>	<b>Number</b>
School Districts	35	Soil & Water	5
Cities	32	Counties	4
Townships	23	Levee Districts	4
Road Districts	20	Towns	3
Water Districts	19	Drainage Dist	3
Fire Districts	18	Special Purpose Business	3
Library Districts	12	Medical Centers and Hospitals	4
Villages	11	Nursing Dist	2
Ambulance Dist	6	Other	10

## APPENDIX I

We reviewed the requirements of Section 610 RSMo and limited the scope of our review to responses to requests for information. Other provisions of Section 610 RSMo were not included in the scope of this audit. We made several assumptions in this audit.

- ❑ There is no distinction between political subdivisions as to size, mission, function, geographic location, and population served regarding the responsibility to respond to requests for records.
- ❑ A political subdivision was considered in compliance with the law if it requested clarification of the request within 3 business days (provided that the records were subsequently received after the clarification).
- ❑ We began the time measurement for responding on the day after receiving our request for records because some requests may have been delivered late in the day.
- ❑ Since the wording in RSMo 610.023.3 refers to the governmental body Acting upon the request within 3 business days, we used the postmark date on the return mailing as the date of measurement.

The audit was made in accordance with applicable generally accepted government auditing standards and included such tests of the procedures and records as were deemed appropriate under the circumstances. The audit included program results and compliance elements.

## **APPENDIX II**

### **BACKGROUND**

The State of Missouri's commitment to openness in government is stated in Section 610.011 of the RSMo. Referred to as the Sunshine Law, the intent of the law is to ensure that public governmental bodies conduct their business in a manner that is open to public scrutiny. Public meetings, including meetings conducted by telephone or other electronic means, are to be held at reasonably convenient times and must be accessible to the public. Meetings should be held in facilities that are accessible to persons with disabilities.

Section 610.010 prescribes that public governmental bodies are defined as legislative, administrative or other governmental entities created by the constitution or statutes of the State of Missouri, or by order or ordinance of any political subdivision or district as well as judicial entities when operating in an administrative capacity. This includes state agencies and officials, governing bodies of institutions of higher education and any department of any political subdivision of the state, county or municipal government, school district, or special-purpose district, including sewer and water districts.

Section 610.023 prescribes that each public governmental body shall make that body's public records available for inspection and copying by the public. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

Section 610.27 prescribes that any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated sections 610.010 to 610.027, the public governmental body or the member shall be subject to a civil fine in the amount of not more than five hundred dollars and the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation of sections 610.010 to 610.026.

## APPENDIX III

### SAMPLE METHODOLOGY AND RESULTS

#### **Audit Universe**

The audit universe consisted of 3,459 political subdivisions identified in the auditor's office database of governmental entities. This database was current as of August 31, 1999.

#### **Sample Design**

The statistical sample was comprised of 214 political subdivisions from the universe of 3,459. This sample size was based on a non-stratified attribute sampling design at the 90 percent confidence level with a  $\pm 5$  percent precision and expected error rate of 30 percent. The 214 political subdivisions were randomly selected from the universe and contained a representative sample of large, medium, and small political subdivisions.

The sample was used to measure the estimated number of political subdivisions that would properly respond to requests for public documents and those that did not respond properly, either by (i) not responding at all, (ii) denying requests, or (iii) delaying requests.

#### **Sample Results**

Based on the results of the sample, we estimate that 1,649 of the 3,459 political subdivisions would not respond properly to requests for public documents.

Population Size	3,459
Sample Size	214
Number not responding properly	102

Projected number of political subdivisions that would not respond properly

Error Rate	47.664 %
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Point Estimate (3,459 x .47664)	1,649
Upper Limit (3,459 x .53328)	1,845
Lower Limit (3,459 x .42046)	1,454

Based on the results of the sample, we estimate that 1,115 of the 3,459 political subdivisions would not respond to requests for public documents.

Population Size	3,459
Sample Size	214

## APPENDIX III

Number not responding            69

Projected number of political subdivisions that would not respond

Error Rate                            32.243%

Point Estimate  $(3,459 \times .32243)$       1,115

Upper Limit     $(3,459 \times .37718)$       1,305

Lower Limit     $(3,459 \times .27128)$       938

Based on the results of the sample, we estimate that 162 of the 3,459 political subdivisions would deny requests for public documents.

Population Size                    3,459

Sample Size                        214

Number denying requests            10

Projected number of political subdivisions that would deny requests

Error Rate                            4.673%

Point Estimate  $(3,459 \times .04673)$       162

Upper Limit     $(3,459 \times .07700)$       266

Lower Limit     $(3,459 \times .02623)$       91

Based on the results of the sample, we estimate that 372 of the 3,459 political subdivisions would delay requests for public documents.

Population Size                    3,459

Sample Size                        214

Number delaying requests            23

Projected number of political subdivisions that would delay requests

Error Rate                            10.748%

Point Estimate  $(3,459 \times .10748)$       372

Upper Limit     $(3,459 \times .14753)$       510

Lower Limit     $(3,459 \times .07561)$       262

## APPENDIX IV

### SCHEDULE OF NON-RESPONDENTS AS OF OCTOBER 19, 1999

Village of Airport Drive
Baden Market Centre Special Business District
Town of Cave
City of Avondale
City of Boonville
City of Salem
Castle Point Street Light District
Village of Guilford
City of Humansville
Waynesville Rural Fire Protection District
City of Howardsville
Eldon Special Road District Miller County
Versailles Special Road District 4 Morgan County
Wolfe Creek Special Road District Ripley County
Conway Special Road District #2 Laclede County
Mayview Special Road District Lafayette County
Friestaff Special Road District
Ponder Gatewood Road District Ripley County
Town of Lake Mykee
City of Sumner
Hume R-VIII School District
Crowder Zeta Special Rd District Stoddard County
City of Fillmore
City of Amazonia
Grand River Township of Daviess County
Adams Township of DeKalb County
Yellow Creek Township of Linn County
Chariton Township of Chariton County
Washington Township of Daviess County
Marion Township of Daviess County
North Benton Township of Linn County
Wilson Township of Putnam County
Pike Township of Stoddard County
Carroll Township of Texas County
Monroe Township of Livingston County

## APPENDIX IV

### SCHEDULE OF NON-RESPONDENTS AS OF OCTOBER 19, 1999

Washington Township of Nodaway County
Hopkins Township of Nodaway County
Daviess County Library
Tightwad Fire Protection District
Village of Gerster
City of Bonne Terre
Union Township Fire Protection District
Bois D'Arc Fire Protection District
KAW Fire Protection District
Shawnee Township of Bates County
Mirabile Township of Caldwell County
Mercer County Library
Central Township of Barton County
South West Township of Barton County
Public Water Supply District 3 Osage County
Eminence R-1 School District
Platte County Drainage Ditch District 1
Public Water Supply District #3 Pulaski County
Crooked River Levee District Ray County
Newtown-Harris R-III School District
Public Water Supply District 1 Christian County
Pleasant View R-IV School District
Ozark County Soil and Water Conservation Dist.
Andrew Public Water Supply District #3
Bates County Water District #2
Public Water Supply District #2 Lincoln County
Special Road District #2 Dade County
Pioneer Special Road District 31 Barry County
Rowland Special Road District Cedar County
Otterville R-VI School District
Gladstone Special Road District 3 Clay County
Howard Bend Levee District St. Louis County
Taney County
South Wilson Special Road District Audrain County



## APPENDIX V

### SCHEDULE OF DENIALS

The following political subdivisions denied the request for records :

<b>POLITICAL SUBDIVISION</b>	<b>REASON GIVEN FOR DENIAL</b>
Essex Special Road District Stoddard County	Identify yourself and specify need to know
Gregory Levee District	Identify yourself and specify need to know
Village of Newtown	Specify need to know
Village of Truxton	Requester does not have a need to know
Mill Creek Dyke and Drainage District	Requester must identify affiliation with district
Golden Age Nursing Home District	Specify need to know
Sheridan Township of Daviess County	Identify yourself and specify need to know
Laclede Community Fire Protection District	Identify yourself and specify need to know
Public Water Supply District 3 Stoddard Cty	Identify yourself and specify need to know
Cooper County R-IV School District	Identify yourself and specify need to know